No. 85-899

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1986

STATE OF CONNECTICUT, PETITIONER

v.

WILLIAM BARRETT

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether, under *Miranda* v. *Arizona*, 384 U.S. 436 (1966), police must immediately terminate a custodial interrogation when a suspect states that he will answer questions orally but will not make a written statement in the absence of an attorney.

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INTEREST OF THE UNITED STATES

The question in this case is whether, under *Miranda* v. *Arizona*, 384 U.S. 436 (1966), a custodial interrogation must immediately cease when a suspect states that he is willing to answer questions orally, but indicates that he will not make a written statement in the absence of an attorney. The Court's analysis and resolution of this question is likely to have a significant effect upon the conduct of federal law enforcement agents in receiving voluntary in-

culpatory statements, and upon the admission of such statements in federal prosecutions.

STATEMENT

1. The evidence at trial established that, on the evening of October 23, 1980, respondent and a companion sexually assaulted a young woman in Wallingford, Connecticut. Immediately after the assault, the victim contacted the New Haven police and identified respondent, a former neighbor, as one of the assailants. Respondent was taken into custody in New Haven later that evening and was transported to the Wallingford police station early the next morning. Pet. App. 3A-4A.

Shortly after respondent's arrival at the station, police twice informed him of his rights under *Miranda* v. *Arizona*, 384 U.S. 436 (1966).[1] Pet. App. 6A; J.A. 6A, 9A, 19A, 70A, 74A, 77A-79A. On both occasions, respondent indicated that he understood his rights (*id.* at 12A, 70A; see *id.* at 130A) and signed forms reprinting the *Miranda* warnings (*id.* at 7A-8A, 10A, 23A, 70A, 74A, 79A). When asked whether he wanted to make a statement, respondent replied that "he would not give the police a[ny] written statement[s] [concerning the assault in the absence of counsel] but he had no problem in talking about the incident" (*id.* at 12A; see *id.* at 21A, 70A, 85A, 97A). With prompting from the police, respondent proceeded to make incriminating statements (see *id.* at 85A-88A). Respondent at no point indicated that he

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[1] Respondent also had been informed of his rights by the New Haven police when he first was taken into custody (Tr. 234, 255, 298).

wanted to terminate the questioning (*id.* at 13A, 14A, 85A).[2]

After the completion of this interview, police discovered that the tape recorder that was used to record the questioning had not functioned (Pet. App. 6A). Accordingly, they again advised respondent of his *Miranda* rights (*ibid.*; J.A. 30A, 39A, 48A-49A, 89A), and he again stated that he understood his rights (*id.* at 31A). As he had prior to the first interview, respondent again declared "that he was willing to talk about [the assault] verbally but he did not want to put anything in writing until his attorney came" (*id.* at 44A). Respondent then substantially repeated his statement (*id.* at 32A-33A, 45A, 56A, 102A).[3]

2. At trial, respondent sought to exclude testimony relating the substance of his incriminating oral statements.[4] He based his motion on the claim that he had invoked his right to counsel when he refused to give the police a written statement in the absence of an attorney. After conducting a suppression hearing, the trial court denied the motion. It found that respondent had been informed of his rights, had indicated that he understood them, had signed a standard

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[2] Respondent's statement took the form of a narrative account of the assault, with intermittent prompting or questioning by the police. While respondent occasionally ignored police questions and continued his narrative, he did not refuse to answer any of the questions. J.A. 24A, 101A.

[3] At the end of this second interview, the police asked respondent whether he would put his oral statement into writing. He refused to do so without the advice of counsel. Pet. App. 6A.

[4] This testimony evidently was based on statements made by respondent at both police interviews (see J.A. 99A-100A).

rights form, and had willingly spoken to the police. J.A. 70A. The court also concluded that respondent "certainly understood" his rights, noting that respondent was aware that he was under no obligation either to give a written statement in the absence of an attorney or to answer all the questions directed at him (*ibid.*). In light of those factors, the court held that respondent's oral statements were "willingly, knowingly and intelligently [made] after an effective knowledgeable waiver of his right to counsel" (*id.* at 71A). The statements accordingly were admitted at trial, and respondent was convicted of sexual assault, unlawful restraint, and a narcotics violation.

The Supreme Court of Connecticut reversed, holding the interrogation of respondent impermissible under *Miranda* and its progeny.[5] The court found that the relevant inquiry required it to make two determinations: "(1) whether the defendant had in fact invoked his right to counsel; and (2) if so, whether he subsequently waived it" (Pet. App. 5A).

In the court's view, respondent's declaration to police that he would not make a written statement in the absence of an attorney sufficed to "invoke" his right to counsel within the meaning of *Miranda*, and therefore to require that the questioning cease (Pet. App. 7A). The court also found it clear that "the police understood this request for counsel" (*ibid.*). And the court concluded (*id.* at 8A) that

> [t]he fact that [respondent] attached his request for counsel to the making of a written statement does not affect the outcome of this first step

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[5] The court noted (Pet. App. 5A n.3) that respondent had not raised any claim under the Connecticut constitution.

> of our inquiry. No particular form of words has ever been required to trigger an individual's fifth amendment protections; * * * nor have requests for counsel been narrowly construed. * * * [Respondent's] refusal to give a written statement without his attorney present was a clear request for the assistance of counsel to protect his rights in his dealings with the police. * * * Such a request continues to be constitutionally effective despite [respondent's] willingness to make oral statements.

The court then proceeded to the second stage of its analysis, inquiring whether respondent "subsequently waived the right he had invoked" (Pet. App. 9A). In the court's view, such a waiver may be found only if the defendant initiates a renewed discussion with the police after making his initial request for an attorney (*ibid.*; see *id.* at 11A). Here, the court found no evidence that, after declining to make a written statement in the absence of counsel, respondent "initiated the subsequent encounters with police which resulted in his incriminating statements. To the contrary, the evidence clearly established that the police had initiated the interrogations." *Ibid.* The court accordingly found respondent's incriminating statements inadmissible, and it remanded the case for a new trial.

SUMMARY OF ARGUMENT

This Court's holding in *Miranda* v. *Arizona*, 384 U.S. 436, 467 (1966), was grounded on the belief that "the process of in-custody interrogation * * * contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." To combat these pressures, the Court erected

a series of prophylactic procedural rules. It required that police, prior to interrogation, give suspects the now-familiar *Miranda* warnings. And the Court insisted that all questioning cease whenever the suspect "invokes" his right to remain silent or to request an attorney. When a suspect indicates that he wishes to remain silent, the Court explained, he "has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise." *Id.* at 474. Similarly, the Court required the termination of questioning after the suspect requests counsel so as to forestall " 'badger[ing]' or 'overreaching' * * * [that] might otherwise wear down the accused." *Smith* v. *Illinois*, No. 84-5332 (Dec. 10, 1984), slip op. 7-8 (citation omitted).

The Supreme Court of Connecticut found these prophylactic rules applicable here, holding that respondent "invoked" his right to counsel within the meaning of *Miranda*—and thus required the police to terminate the interrogation immediately—when he declared that he would answer questions orally, but would not make a written statement in the absence of counsel. Nothing in *Miranda*, however, suggests that this sort of *limited* invocation of the right to counsel mandates the termination of *all* questioning. To the contrary, the Court has indicated that further questioning becomes inappropriate when the suspect "express[es] his desire to deal with the police *only* through counsel." *Edwards* v. *Arizona*, 451 U.S. 477, 484-485 (1981) (emphasis added). Respondent, of course, expressed no such desire here.

This conclusion—permitting the interrogation to continue when the suspect expresses reservations

about how he wishes questioning to proceed (reservations that are scrupulously respected) but does not fully invoke his *Miranda* rights—follows directly from the theory of *Miranda*. If the suspect is informed of and understands his rights, yet expresses no reluctance to answer the questions at issue, there is no reason to indulge in *Miranda*'s presumption that the answers to those questions "cannot be other than the product of compulsion." And when the suspect is at all times willing to speak in the absence of counsel, there obviously is no need to apply a rule intended to guard against coercive badgering that might "wear down the accused."

2. In holding that respondent had fully invoked his right to counsel, the Supreme Court of Connecticut noted only that requests for counsel should not be narrowly construed. But respondent's request was not an ambiguous one that arguably should have been read broadly to guarantee the kind of respect accorded an equivocal assertion of the Fifth Amendment privilege. The meaning of respondent's limited invocation of the right to counsel was entirely clear—albeit narrow—and it left no doubt about his willingness to answer questions orally in the absence of an attorney.

If the Connecticut court's holding instead is read to express the theory that, once a suspect recognizes the value of the assistance of counsel in *some* of his dealings with the police, the courts must gratuitously insist that *all* questioning cease unless an attorney is present, it also is insupportable. Whatever tactical advantages a suspect supposes to exist in his decision to speak in the absence of counsel, neither the courts nor the police are obligated to safeguard the suspect's interests more fully than the suspect himself has thought necessary. Nothing in *Miranda* assumes or

seeks to guarantee that suspects will act wisely in their dealings with law enforcement authorities. *Miranda*'s rules ensure only that the accused will not be compelled to confess by the atmosphere of in-custody interrogation. By ignoring that single purpose, the holding of the Supreme Court of Connecticut "would transform the *Miranda* safeguards into wholly irrational obstacles to legitimate police investigative activity, and deprive suspects of an opportunity to make informed and intelligent assessments of their interests." *Michigan* v. *Mosley*, 423 U.S. 96, 102 (1975).

ARGUMENT

RESPONDENT DID NOT INVOKE HIS RIGHT TO COUNSEL PRIOR TO MAKING INCULPATORY STATEMENTS

It is common ground that, under *Miranda* v. *Arizona*, 384 U.S. 436 (1966), law enforcement officers must inform a suspect that he has the right to remain silent or to request the presence of an attorney before he is subjected to custodial interrogation. See, *e.g.*, *id.* at 473-474; *Moran* v. *Burbine*, No. 84-1485 (Mar. 10, 1986), slip op. 6. It is similarly beyond dispute that an in-custody interrogation must cease once the suspect "invokes" his right to remain silent or to the assistance of counsel by affirmatively asserting those rights. See, *e.g.*, *Miranda*, 384 U.S. at 473; *Smith* v. *Illinois*, No. 84-5332 (Dec. 10, 1984), slip op. 4-5. The narrow question in this case is whether a suspect should be deemed to have invoked these *Miranda* rights for all purposes—thus immediately cutting off further interrogation—when he indicated that he was willing to answer questions orally, but not to make a written statement, in the absence of counsel. The Supreme Court of Connecticut's answer to this question, which requires the termination of a

custodial interview even when the suspect has expressed no reluctance whatsoever to speak to the police in the absence of counsel, cannot be reconciled with either the language or the purposes of *Miranda*.

1. The Court's holding in *Miranda* was grounded on the understanding that "the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely" (384 U.S. at 467; see *Moran*, slip op. 6). The requirement that police give suspects the now-familiar *Miranda* warnings prior to interrogation was intended "[t]o combat this inherent compulsion" (*Moran*, slip op. 6) by assuring that suspects are "effectively apprised of their rights," and thus are placed in a position "permit[ting] a full opportunity to exercise the privilege against self-incrimination." *Miranda*, 384 U.S. at 467. See also *Oregon* v. *Elstad*, No. 83-773 (Mar. 4, 1985), slip op. 12.[6] If law enforcement officers fail to warn the suspect of his right to remain silent or to request the presence of an attorney, or fail to obtain a valid waiver of these rights from the suspect, statements made by the suspect in response to police interrogation may not be admitted into evidence. *Moran*, slip op. 6.

The Court also has looked to the presumptively coercive nature of custodial interrogation in creating other prophylactic rules governing the admissibility of statements made by suspects. In particular, the Court has held that all questioning must cease when-

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[6] "Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has [the] right to the presence of an attorney, either retained or appointed." *Miranda*, 384 U.S. at 444.

ever the suspect "invokes" his right to remain silent or to request counsel. When a suspect indicates that he wishes to remain silent, the Court has explained, he "has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise." *Miranda*, 384 U.S. at 474. Similarly, the Court has enunciated a " 'bright-line rule' that *all* questioning must cease after an accused requests counsel" (*Smith*, slip op. 7 (emphasis in original)), unless the suspect himself initiates subsequent discussions with the police. See *id.* at 4-5; *Edwards* v. *Arizona*, 451 U.S. 477 (1981). The Court has reasoned that, "[i]n the absence of such a bright-line prohibition, the authorities through 'badger[ing]' or 'overreaching'—explicit or subtle, deliberate or unintentional—might otherwise wear down the accused and persuade him to incriminate himself notwithstanding his earlier request for counsel's assistance" (*Smith*, slip op. 7-8 (citation omitted)). See *id.* at 8-9 n.8; *Oregon* v. *Bradshaw*, 462 U.S. 1039, 1044 (1983) (plurality opinion). See also *Michigan* v. *Mosley*, 423 U.S. 96, 105-106 (1975).

2. The Supreme Court of Connecticut found this "bright-line rule" applicable here. In the court's view, respondent "invoked" his right to counsel within the meaning of *Miranda*, *Edwards*, and *Smith* when he stated that he would answer questions orally, but would not make a written statement in the absence of counsel. This invocation, the court held, required the police to terminate the interrogation immediately.

In reaching this conclusion, however, the court attributed no significance to what respondent actually told the police. When asked whether he would waive his privilege against compulsory self-incrimination,

respondent replied that "he would not give the police any written statements but he had no problem in talking" (J.A. 12A; see *id.* at 44A). Nothing in *Miranda* suggests that this sort of *limited* invocation of the right to counsel requires the termination of *all* questioning. "While a general request for counsel indicates an unwillingness to submit to any further questioning," a request for the assistance of counsel only during certain portions of the interrogation hardly "itself indicate[s] such an unwillingness." *Stumes* v. *Solem*, 752 F.2d 317, 320-321 (8th Cir.), cert. denied, No. 84-6358 (Apr. 29, 1985). To the contrary, *Miranda* in terms mandates cessation of the interrogation only when the accused "indicates that he wants [an attorney] *before speaking to police*" (384 U.S. at 474 (emphasis added); see *id.* at 444-445). The Court's more recent decisions in the area likewise have indicated that further questioning becomes inappropriate when the suspect "express[es] his desire to deal with the police *only* through counsel." *Edwards*, 451 U.S. at 484-485 (emphasis added). See *Smith*, slip op. 4. And the Court has made it clear that a suspect's refusal to answer particular questions is "not [an] assertion[] of his right to remain silent" because such a refusal does not amount to a request to terminate the interview altogether. *Fare* v. *Michael C.*, 442 U.S. 707, 727 (1979).

The lower courts uniformly agree, moreover, that a suspect does not fully invoke his right to remain silent or to have the assistance of counsel when he refuses to answer certain questions, or when he agrees to make an oral but not a written statement. A limited invocation of the right to remain silent therefore does not require that the interrogation cease altogether. See *Stumes*, 752 F.2d at 320-321; *United*

States v. *Jardina*, 747 F.2d 945, 949 (5th Cir. 1984), cert. denied, No. 84-6232 (Mar. 18, 1985); *Harris* v. *Riddle*, 551 F.2d 936, 938-939 (4th Cir.), cert. denied, 434 U.S. 849 (1977); *United States* v. *Frazier*, 476 F.2d 891, 899 (D.C. Cir. 1973) (en banc); *United States* v. *Cooper*, 499 F.2d 1060, 1062 (D.C. Cir. 1974); *Pettyjohn* v. *United States*, 419 F.2d 651, 655 (D.C. Cir. 1969), cert. denied, 397 U.S. 1058 (1970); *State* v. *Jones*, 125 N.H. 490, 493-494, 484 A.2d 1070, 1073 (1984). Thus, if a suspect, after being fully advised of his *Miranda* rights, agrees to speak with one officer but not another, or agrees to answer questions about one offense but not another, or agrees to speak only if his statement is not recorded, the police are not required to disregard the suspect's decision and treat his limited waiver as a full-scale invocation of his right to remain silent for all purposes and on all subjects. See, *e.g.*, *United States* v. *Thierman*, 678 F.2d 1331, 1335 (9th Cir. 1982). So long as the police respect the terms on which the suspect has agreed to speak, and so long as they do not try to inveigle him into expanding the scope of his waiver, the products of the restricted interrogation to which the suspect has consented should be fully admissible at trial.

There is nothing surprising or anomalous in this approach to the invocation of *Miranda* rights. The theory of *Miranda* is that "full comprehension of the rights to remain silent and request an attorney are sufficient to dispel whatever coercion is inherent in the interrogation process." *Moran*, slip op. 13. Once the suspect is armed with knowledge of these rights, his choice whether to exercise his privilege to remain silent should ordinarily be viewed as an " 'act of free will.' " *Elstad*, slip op. 12 (citation omitted). See *United States* v. *Washington*, 431 U.S. 181, 188

(1977). That reasoning is wholly applicable in a case, such as this one, where the suspect invokes his *Miranda* rights only to a limited extent and otherwise chooses to continue his dialogue with the police. If the suspect is informed of and understands his rights, yet expresses no reluctance to answer the questions at issue, there is no reason to indulge in *Miranda*'s presumption that his answers to those questions "cannot be other than the product of compulsion" (384 U.S. at 474). And when the suspect is at all times willing to speak, there obviously is no need to apply a rule intended to guard against coercive badgering that might "wear down the accused" (*Smith*, slip op. 7-8).

3. In rejecting this analysis, the Supreme Court of Connecticut simply failed to consider the policies that underlie *Miranda*, and accordingly failed to ask the question that is central in any *Miranda* challenge: "whether the defendant in fact knowingly and voluntarily waived the rights delineated in the *Miranda* case." *North Carolina* v. *Butler*, 441 U.S. 369, 373 (1979). Instead, the Court noted only that requests for counsel should not be "narrowly construed" (Pet. App. 8A), and based its holding on the belief that respondent's limited invocation of his right to an attorney was appropriately viewed as a general request for the assistance of counsel in protecting *all* of "his rights in his dealings with the police" (*ibid.*). But respondent's request was not an ambiguous one that arguably should have been construed broadly to guarantee respect for an equivocal assertion of the Fifth Amendment privilege. Cf. *Smith*, slip op. 5 & n.3. The meaning of his limited invocation of the right to counsel was entirely clear—albeit narrow—and it left no doubt about his willingness to answer questions orally in the absence of an attorney.

Similarly, if the Connecticut court's holding is read to express the theory that, once a suspect recognizes the value of the assistance of counsel in some of his dealings with the police, *all* questioning must cease unless an attorney is present, it remains insupportable. Whatever the tactical merits of a suspect's decision to speak to the police in the absence of counsel, neither the courts nor the police are obligated to safeguard the suspect's interests more fully than the suspect himself has thought necessary. See *Moran*, slip op. 19 n.37. *Miranda*'s affirmative purpose was neither to make interrogations impossible nor to discourage truly voluntary confessions. As the Court repeatedly has noted, " 'far from being prohibited by the Constitution, admissions of guilt by wrongdoers, if not coerced, are inherently desirable.' " *Elstad*, slip op. 6 (quoting *Washington*, 431 U.S. at 187). See *Moran*, slip op. 12; *New York* v. *Quarles*, 467 U.S. 649, 654 (1984). *Miranda*'s rules ensure only that such admissions by suspects are not coerced.

It follows from this rationale, of course, that *Miranda* does not guarantee that suspects will act in their own best interests in their dealings with police. That conclusion is implicit in the Court's consistent judgment that—despite the undeniable and often-acknowledged value of an attorney in protecting the interests of a suspect during custodial interrogation, see, *e.g.*, *Miranda*, 384 U.S. at 470; *Michael C.*, 442 U.S. at 719, 722—a lawyer need not be present at every interrogation, and that the right to the assistance of counsel may be waived even after it has been invoked. See, *e.g.*, *Moran*, slip op. 12; *Wyrick* v. *Fields*, 459 U.S. 42, 46 (1982); *Edwards*, 451 U.S. at 485-486 & n.9. Indeed, the Court has held explicitly that law enforcement agents are under no obligation to remind or inform suspects of all of the

considerations, either legal or factual, that bear on the wisdom of a waiver decision. See *Moran*, slip op. 11; *Elstad*, slip op. 17.[7]

The Court thus consistently has "rejected any paternalistic rule protecting a defendant from his intelligent and voluntary decisions about his own criminal case," reasoning that creating such a rule "would be to 'imprison a man in his privileges,' *Adams* v. *United States ex rel. McCann*, 317 U.S. 269, 280 (1942), and to disregard 'that respect for the individual which is the lifeblood of the law,' *Faretta* v. *California*, [422 U.S. 806,] 834 [(1975)]." *Mosley*, 423 U.S. at 109 (footnote omitted) (White, J., concurring in the result). Taking such a tack would also entirely disregard *Miranda*'s "explicitly stated rationale" (*Beckwith* v. *United States*, 425 U.S. 341, 345 (1976)), rooted in the Fifth Amendment's privilege against compulsory self-incrimination, which rests on the proposition that a recitation of the *Miranda* rights is necessary simply to prevent the suspect's will from being overborne. By departing from this central inquiry into voluntariness, the Connecticut court's holding "would transform the *Miranda* safeguards into wholly irrational obstacles to legitimate police investigative activity, and deprive suspects of an opportunity to make informed and intelligent assessments of their interests." *Mosley*, 423 U.S. at 102. See *Moran*, slip op. 11.

In addition to disregarding the touchstone of voluntariness, the Connecticut court's refusal to recognize

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[7] "[T]he test is not whether [the suspect] made an intelligent decision in the sense that it was wise or smart to admit his participation in the crime, but whether his decision was made with the full understanding that he need say nothing at all and that he might then consult with a lawyer if he so desired." *United States* v. *Hall*, 396 F.2d 841, 846 (4th Cir.), cert. denied, 393 U.S. 918 (1968).

a limited waiver could generate substantial confusion in an area in which clear rules are essential. See *Moran*, slip op. 11; *Michael C.*, 442 U.S. at 718. Under the Connecticut court's analysis, for example, it is not clear whether a suspect could be interviewed if he agreed to talk to the police without counsel, but indicated that he would like the assistance of counsel at trial or at some later point in the proceedings. Compare *Nash* v. *Estelle*, 597 F.2d 513, 518 (5th Cir.) (en banc), cert. denied, 444 U.S. 981 (1979) (no bar to interrogation if police determine that suspect wishes to invoke counsel for later stages of the criminal process, but not during questioning). Thus, the Connecticut rule would appear to make virtually any request for the assistance of counsel, no matter how clearly restricted to a context other than the interrogation, sufficient to require that the questioning cease. Because the police could not act in reliance on the terms of the waiver set out by the suspect himself, they would be left to speculate about whether a particular reference to counsel would likely be construed as an oblique—but sufficient—invocation of the suspect's right to counsel during interrogation.

4. When respondent stated that "he would not give the police any written statements but he had no problem in talking about the [assault]," he affirmatively indicated that he did not seek the presence of counsel prior to answering questions; his inculpatory remarks accordingly should not have been treated as the presumptive product of compulsion. In these circumstances, the proper inquiry governing the admissibility of respondent's statements—an inquiry that was not undertaken by the Supreme Court of Connecticut—involves the determination whether respondent's partial waiver of his Fifth Amendment privi-

lege was voluntarily, knowingly, and intelligently made. As the Court repeatedly has explained, this determination depends upon the particular facts and circumstances surrounding the case. *Bradshaw*, 462 U.S. at 1046 (plurality opinion); *Butler*, 441 U.S. at 374-375; see also *Edwards*, 451 U.S. at 482; *Michael C.*, 442 U.S. at 724-725.

The answer to that inquiry is plain on the record here. There is no doubt that respondent was informed of his *Miranda* rights. Moreover, he testified at trial (J.A. 130A), and the trial court found (*id.* at 70A), that he understood those rights. The trial court also determined (*id.* at 71A) that no threats or coercive tactics were used to extract respondent's statement. And the questioning of respondent by police "was restrained and free from the abuses that so concerned the Court in *Miranda*." *Michael C.*, 442 U.S. at 727. Given these considerations, the trial court was clearly correct in ruling in favor of the admissibility of respondent's statement. Compare *Bradshaw*, 462 U.S. at 1046-1047.[8]

It may be added that the record here leaves no room for an assertion that respondent failed to understand that an oral, as opposed to a written, statement could be used against him at trial. In his pleadings below, respondent at no point suggested any such lack of understanding. In any event, as the Court has

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[8] In holding that respondent had invoked his *Miranda* rights, the Supreme Court of Connecticut declared that the trial court "impliedly found that the defendant had requested counsel" (Pet. App. 7A (footnote omitted)). The trial court, however, never held that respondent had "invoked" his right to counsel; it simply noted in passing that respondent had expressed unwillingness to give a written statement in the absence of an attorney (see J.A. 70A).

suggested in a somewhat different context (*Washington*, 431 U.S. at 188), it seems "inconceivable that [a *Miranda*] warning would fail to alert" a suspect to the fact that, if he chooses to speak, "anything [he] say[s] can and will be used against [him] in court" (J.A. 48A). Cf. *Kennedy* v. *Fairman*, 618 F.2d 1242, 1248 (7th Cir. 1980). And as the courts of appeals have noted, a suspect's refusal to make a written statement hardly compels the conclusion that he believed his oral remarks to be inadmissible: "It is * * * a common experience of life that in many circumstances persons are willing to convey information orally but are reluctant to put the same thing in writing." *Cooper*, 499 F.2d at 1062. See *Harris*, 551 F.2d at 938; *Frazier*, 476 F.2d at 898 & n.7. Certainly, the police should not have been required to advise respondent that an oral statement could be nearly as damaging at trial as a written one. Cf. *Elstad*, slip op. 17-18 (police not required to advise suspect that his prior statement could not be used against him, even though without that information he may not have been aware of the "full consequences" of his decision to speak to the police).[9]

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[9] Indeed, a number of courts have held confessions to be admissible even where the suspect affirmatively "indicate[d] a misapprehension of [the] law," finding that "*Miranda* does not put upon the police the burden of explaining the rules of evidence and the substantive criminal law." *Harris*, 551 F.2d at 938. Those courts have reasoned that a suspect makes an intelligent waiver whenever he chooses "to speak with the knowledge that he could keep silent or have counsel present while he talked. * * * It is wholly irrelevant that the decision to talk turns out to be wise or foolish, or that the decision is the result of poor cerebration or misinformation as to the law and/or the facts." *Id.* at 939. Accord, *State* v. *Jones*, 125 N.H. 490, 493-494, 484 A.2d 1070, 1071, 1073 (N.H. 1984); *State* v.

There accordingly were no grounds in this case for the suppression of respondent's statement.

CONCLUSION

The judgment of the Supreme Court of Connecticut should be reversed.

Respectfully submitted.

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McKnight, 52 N.J. 35, 54-55, 243 A.2d 240, 251 (1968). Cf. *People* v. *Williams*, 62 N.Y.2d 285, 465 N.E.2d 327, 329 (1984). See generally, *Elstad*, slip op. 18 ("we have not held that the *sine qua non* for a knowing and intelligent waiver of the right to remain silent is a full and complete appreciation of all of the consequences flowing from the nature and the quality of the evidence in the case").

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